

An Uphill Battle for Recognition

In the late 1980s, a protracted and sometimes inglorious preservation struggle began at the Brandy Station battlefield in Culpeper County, Virginia. That struggle played out in the arena of government decision-making, but time and the tenacity of a local citizens group—not the governmental decisions—became the battlefield's greatest allies.

When the preservation effort began, only a handful of local residents were aware of the historic significance of the rolling fields and woodlands in the heart of the county. A lone cast iron sign on U.S. Route 29 was the only tangible reminder that the greatest cavalry battle of the Civil War had raged across this rural landscape. The site was not a federal, state, or local park; and no conservation easements or other protective mechanisms were in place. The battlefield was not a local historic district, nor was it mentioned in Culpeper County's comprehensive plan. The site had not been listed in the Virginia Landmark Register or in the National Register of Historic Places. In short, public awareness of the battlefield was practically non-existent.

The fledgling Brandy Station Foundation, a group of citizens concerned with the future preservation of the battlefield, recognized that the site was imminently threatened by proposed development and that the site's identity crisis needed to be resolved. Governmental decisions about the use

of the site would soon be made without any authoritative certification or public acknowledgment that the site was historic. In 1989, the Foundation submitted a proposal to the Virginia Department of Historic Resources for listing the battlefield on the state's register. The Foundation also asked the National Park Service (NPS) to designate the battlefield as a National Historic Landmark. The state documented and evaluated the battlefield and formally added it to the Virginia Landmark Register in October 1989. Virginia's honorific designation affirmed the Foundation's argument of the battlefield's significance, but it offered no substantive protection.

About this time, a California-based developer petitioned Culpeper County officials to rezone a portion of the battlefield—prime agricultural land—for industrial development. The proposed development would be four times the size of the ten largest industries in the county put together. The development proposal came at the height of the Washington metropolitan area's 20-year land boom. Many in the county perceived it as a significant generator of revenue. In 1990, the Culpeper County Board of Supervisors, overruling its own Planning Commission, voted to rezone 1,500 acres of the Brandy Station battlefield from agricultural to industrial use. Ironically, the Board made its decision during the airing of Ken Burns' PBS documentary *The Civil War*.

The Foundation filed suit against the county immediately. The Foundation argued that, given the historic significance of the site, the Board's decision to rezone the land was arbitrary and capricious because the Board failed to give the Foundation a reasonable opportunity to present their case against rezoning. The Foundation claimed that the Board's failure had violated the Foundation's due process rights under the Fourteenth Amendment to the U.S. Constitution.¹ I served as the Foundation's legal counsel, and we were extremely fortunate to secure the pro bono services of Washington's largest law firm, Arnold & Porter.

The lawsuit lasted two-and-a-half years. Although the Court ultimately rejected the Foundation's constitutional arguments, time and events marched on—and circumstances changed while the case was in court. The Foundation con-

The Brandy Station battlefield along U.S. Route 29.





Ruffins Run, the wetlands that triggered Section 106 compliance by the Army Corps of Engineers.

tinued its efforts to gain recognition for the battlefield and to galvanize support for its preservation.

On February 28, 1991, the National Park Service determined that 13,903 acres of the "Brandy Station Battlefield and Related Locations," as demarcated on the Virginia Landmark Register, was eligible for the National Register of Historic Places.² The NPS then became active on two fronts. Using its Geographic Information Systems capabilities, the NPS created detailed maps that included data about troop movements, known areas of battle, topography, ground cover, streams, and historic resources. The NPS documentation revealed that the proposed industrial development was located at the very center of the Brandy Station battlefield. The NPS also sought to negotiate with the developer and with county officials to identify and agree upon a development scheme that would be sensitive to the core areas of the battlefield.

The Brandy Station battlefield received additional national attention while its proponents were in court. The Congressionally-appointed Civil War Sites Advisory Commission named Brandy Station among the 50 most endangered Civil War battlefields in the nation. The National Trust for Historic Preservation placed Brandy Station on its list of the 11 most endangered historic resources in the country. The Ken Burns documentary and the movie *Glory* renewed national public interest in the Civil War and fostered the growth of preservation groups such as the Association for the Preservation of Civil War Sites (APCWS).

There were also setbacks. In 1991, the Virginia General Assembly, under great political pressure to do so, enacted legislation that required owner consent for all listings in the state landmarks register. The law was written to apply retroactively to two recent, controversial designations: the Brandy Station and Bristow Station bat-

tlefields. Brandy Station was removed from the Virginia Landmark Register in 1993. Further, the developer at Brandy Station protested the National Park Service's determination of National Register eligibility and succeeded in getting Secretary of the Interior Manuel Lujan, Jr. to withdraw the determination on procedural grounds in late 1992. However, the two designations had done their work: the battlefield was transformed from an obscure site to a nationally recognized historic resource.

Time also brought about another critical change: the booming real estate market went bust. The faltering market, combined with continuing efforts in and out of court to preserve the battlefield, made investment in the industrial development less attractive than it had been in 1989. The developer was forced to place his partnership in bankruptcy. The Foundation, with financial backing from the APCWS, bid on the land in bankruptcy court. The court ruled, however, in favor of a proposal from a second developer who sought to build a Formula 1 racetrack on the site. The second developer acquired 500 of the original 1,500 acres rezoned by the county.³

The potentially destructive nature of this racetrack—with its attendant noise, pollution, dust, and traffic—angered many county residents. While opposition to his proposed venture grew, the developer began the process of obtaining the necessary permits for the project. The proposed racetrack complex required an Army Corps of Engineers permit to fill about one acre of federally protected wetlands.⁴ The Corps could not issue the permit without first considering the possible impact on historic resources under Section 106 of the National Historic Preservation Act of 1966, as amended. Technically, but importantly, the withdrawal of the NPS's previous determination of eligibility did not mean the battlefield was ineligible for the National Register. Instead, it meant only that there was no official determination one way or the other. Consequently, the Corps was obliged to consider the question anew; and the previous documentation left no doubt of the battlefield's eligibility.

The Brandy Station Foundation's aggressive interest in the Corps' permitting process ensured that the Corps held public hearings and considered the permit application at length before making a decision. The Corps ultimately issued the permit; but the Foundation, with the assistance of the Washington law firm Robins, Kaplan, Miller & Ciresi, went to court again to challenge the Corps' action.

The Foundation's lawyers argued that the Corps erred in awarding the permit on two counts: first, that the agency needed to take into consider-

ation the indirect effects of the racetrack (e.g., noise, pollution, traffic) in addition to the direct effect of filling in and thereby destroying wetlands; and second, that the agency needed to take into account the impact of the racetrack on the entire battlefield, not just the isolated area of wetlands. The case never went to court. The racetrack developer's financing collapsed and plans for the racetrack were scratched, making the case moot. The land reverted to the first developer.

The Foundation renewed its efforts to acquire the land. Relying again on the generous financial backing of the APCWS, the Foundation succeeded in striking a deal with the original developer and interested contiguous neighbors to purchase 800 acres of the industrially zoned land and an additional 700 acres of contiguous agricultural land. The sale was finalized in April 1997, preserving the most significant portion of the battlefield for generations to come.

The key to the Foundation's ultimate success has been its willingness and ability to participate aggressively in every public decision-making forum. While the Foundation obviously did not succeed in winning sympathetic decisions from the county, the court, or the Army Corps of Engineers, its efforts in each of those arenas allowed for ever-increasing public attention that built the case for preservation of a significant and threatened resource. When the chance to preserve the battlefield through acquisition finally arose, Brandy

Station had become a cause that could and did attract the funds to make the purchase possible.

Notes

- ¹ The Board allowed representatives from the Foundation only three minutes to present the historic significance of the Civil War battlefield. The Foundation had assembled a team of experts: financial people, representatives from the transportation industry, and historians. All were excluded from presenting a reasonable case for the preservation of an important historic site. This exclusion provided the Foundation with grounds to launch a lawsuit.
- ² The three separate parcels cited in the unilateral Determination of Eligibility met National Register criteria A, B, and D.
- ³ The other 1,000 acres remained zoned for industrial use.
- ⁴ The Army Corps of Engineers had authority to issue the permit under §404 of the Clean Water Act, 33 U.S.C. §1344(e).

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Treatments for Historic Battlefield Landscapes

The physical manifestation of cultural history is a complex layering of things associated with people and events. Consider, for example, the Piper Farm at Antietam National Battlefield. The farm complex has a high level of integrity for its turn-of-the-century development. Therefore, if the decision is made to "restore" this landscape to the Civil War period, the result may be the removal of this farm complex and consequent loss of significant history. Interpreting the multiple layers of a landscape's continuum is a more honest cultural landscape preservation approach.

Careful planning prior to treatment can help prevent irrevocable damage to a historic battlefield

landscape through a misguided treatment decision. Professional techniques for identifying, documenting, and treating cultural landscapes have advanced over the past 25 years and are continually being refined. As described in the National Park Service publication *Preservation Brief #36: Protecting Cultural Landscapes*, the preservation planning process for cultural landscapes, including historic battlefields, should involve historical research; inventory and documentation of existing conditions; site analysis and evaluation of integrity and significance; development of a cultural landscape preservation approach and treatment plan; development of a cultural landscape management plan and management philosophy;